IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 2ND NOVEMBER 2006 / 11TH KARTHIKA 1928

WP(C).No. 29867 of 2004(E)

PETITIONER:

P.K.SADANANDAN, S/O. GOVINDAN,
AGED 58 YEARS, PALATHU HOUSE, NADAKKAVU P.O.,
UDAYAMPEROOR, ERNAKULAM.

BY ADV. SRI.V.K.KISHOR
SMT.AYSHA RAHMAN

RESPONDENTS:
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1. THE DISTRICT COLLECTOR,
ERNAKULAM.

2. THE DEPUTY TAHSILDAR (R.R),
KERALA FINANCIAL CORPORATION, ERNAKULAM-682 017.

3. THE VILLAGE OFFICER,
MANAKUNNAM VILLAGE OFFICE, UDAYAMPEROOR.

4. THE BRANCH MANAGER,
KERALA FINANCIAL CORPORATION, KALOOR BRANCH,
KALOOR, ERNAKULAM.

ADDL.5. SUMATHI, W/O. SUNDHARESHAN, MAYALILVEEDU, UDHAYAMPEROOR,
ERNAKULAM.

ADDL. R5 IS IMPLEADED AS PER ORDER ON I.A. 16712/04 DATED 1.12.2004

R1 TO R3 BY G.P. SRI. I.V. PRAMOD
R4 BY ADV. SRI.M.M.SAYED MUHAMMED, SC, KFC
ADDL. R5 BY ADV. SRI.C.R.SIVAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE NOTICE OF SALE OF IMMOVABLE PROPERTY NO. DTE 09/03/RR/KFC DATED 4.9.2004 OF THE 2ND RESPONDENT IN THE NAME OF PETITIONER.

EXT.P2 TRUE COPY OF THE ENVELOP IN WHICH EXT.P1 NOTICE RECEIVED BY THE PETITIONER.

EXT.P3 TRUE COPY OF THE PETITION DATED 7.10.2004 OF THE PETITIONER SUBMITTED TO THE 1ST RESPONDENT.

5TH RESPONDENT'S EXHIBITS:

EXT.R5(a) TRUE COPY OF THE ATTACHMENT MAHAZAR DATED 28.10.04

EXT.R5(b) TRUE COPY OF THE REPRESENTATION DATED 29.10.04

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

W.P.C.NO. 29867 OF 2004

Dated this the 2nd day of November, 2006

JUDGMENT

W.P. is filed by a guarantor of a loan taken by the fifth respondent from KFC. Even though principal debtor and guarantor can be proceeded against by the creditor, it is admitted by counsel for the fifth respondent that movable properties of principal debtor are already sold. If the sale proceeds of movables are not sufficient to take care of the loan amount, then immovable properties of the principal debtor can also be sold. Even though guarantor's property can also be sold simultaneously or even before the sale of principal debtor's property, I feel if sale of borrower's property is sufficient to discharge the liability, then guarantor can be spared. W.P. is therefore disposed of directing the recovery authorities to sell the property of the borrower first and if there is any balance loan amount left, then they are free to proceed against so much property of the guarantor as are required to discharge the balance loan liability.

(C.N.RAMACHANDRAN NAIR)
Judge